

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
Petition for Rulemaking )  
of Pacific Bell Mobile ) RM - 8643  
Services Regarding a Plan )  
for Sharing the Costs of )  
Microwave Relocation )

To: The Commission

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UTC REPLY COMMENTS ON  
PETITION FOR RULEMAKING

Jeffrey L. Sheldon  
Sean A. Stokes

UTC  
1140 Connecticut Avenue, N.W.  
Suite 1140  
Washington, D.C. 20036

(202) 872-0030

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## **SUMMARY**

UTC continues to support the creation of a cost-sharing requirement among PCS licensees for the reimbursement of microwave relocation expenses. However, UTC opposes imposition of a price cap as it would hinder PCS-microwave relocation negotiations and could undermine the ability of incumbent microwave licensees to receive full compensation for all relocation expenses. Instead of a price cap, UTC recommends adoption of a process under which PCS licensees would negotiate over the "interference rights" that would be acquired from the incumbent microwave licensees.

The Commission should resist efforts by some elements in the PCS community to broaden the focus of this proceeding into a reconsideration of the fundamental principles of the "emerging technologies" docket. The 2 GHz transition plan is an equitable approach based on arms-length negotiations that fully protects the interests of all parties. No compelling reason has been put forward that would warrant a change in these rules, and which could only delay the development of PCS.

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To: The Commission

Pursuant to Section 1.405 of the Federal Communications Commission's (FCC) Rules, UTC<sup>1</sup> hereby submits its reply comments with respect to the May 5, 1995, Pacific Bell Mobile Services (PBMS) "Petition for Rulemaking" regarding the sharing of 2 GHz microwave relocation costs.

<sup>1</sup> UTC, The Telecommunications Association, was formerly known as the Utilities Telecommunications Council.

As the national representative on communications matters for the nation's electric, gas, and water utilities, and natural gas pipelines, UTC filed comments on the PBMS petition. In its comments UTC supported the general concept of cost-sharing but indicated that a number of aspects of the PBMS proposal must be revised in order to retain the flexibility and integrity of the Commission's microwave transition plan. Below, UTC again addresses these issues in the context of the comments of the various parties in this proceeding.

#### **I. Cost-Sharing Concept Widely Supported**

Under the Commission's rules PCS and other emerging technology licensees are required to avoid interference to incumbent microwave licensees, and to fully compensate such licensees for their relocation to comparable alternative facilities.<sup>2</sup> The PBMS petition attempts to resolve the issue of allocating costs in situations where multiple PCS licensees may have overlapping responsibilities with regard

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<sup>2</sup> First Report and Order, ET Docket No. 92-9, 7 FCC Rcd 6886 (1992).

to individual incumbent microwave links. PBMS' solution is the adoption of a mandatory cost-sharing mechanism in which all PCS licensees participate.

Specifically, the PBMS plan proposes the transfer of the incumbent microwave licensee's right of non-interference to the PCS licensee that relocates the station. The PCS licensee's interference rights would be indicated in the FCC's data base as if the microwave path were still in operation. When another PCS provider conducts an interference analysis for its system, it would have to approach the PCS licensee holding the "interference rights" concerning reimbursement of the initial PCS licensee's costs of relocating the microwave station.

Virtually all of the commenting parties agree that the idea of a cost-sharing plan has merit. Adoption of a cost-sharing requirement based upon a transfer of interference rights will eliminate the potential inequity of certain PCS

licensees bearing the burden of relocating microwave links for competing PCS licensees -- the "free rider" problem.

In addition, a cost sharing plan would facilitate a coordinated relocation of large integrated microwave networks and thereby streamline the number of different parties with whom an individual licensee has to negotiate. The American Petroleum Institute (API) underscores the importance of this aspect of cost sharing noting that the incumbent's greatest concern is with the integrity of its entire system. API therefore recommends that any cost sharing plan be broad enough to cover the relocation of entire systems rather than individual links.<sup>3</sup>

Southwestern Bell Mobile Systems (SBMS) is alone in opposing PBMS' recommendation that cost sharing be broad enough to cover entire microwave systems. SBMS believes that the FCC should make it clear that the PCS provider

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<sup>3</sup> API, p. 7.

must only replace the path or paths with which the PCS provider will actually interfere.<sup>4</sup> SBMS' objection fails to recognize that the FCC's transition rules guarantee the integrity of the incumbent's entire microwave system and if moving an individual path degrades or compromises other components of the system the PCS provider is obligated to take steps to correct those problems, including if necessary, the relocation of other paths.

Accounting for the relocation of multiple paths or entire systems in the cost-sharing provisions does not mean that in every instance the PCS licensee will actually move multiple paths. It would simply enable those PCS licensees that voluntarily agree to relocate multiple paths to recover such relocation expenses from other PCS licensees that will benefit from the relocation of the individual paths.

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<sup>4</sup> SBMS, p. 7.



Significantly, it should be noted that the Personal Communications Industry Association (PCIA) lists the relocation of multiple links as one of the primary benefits of cost-sharing. PCIA states: "The relocation process will be greatly simplified for microwave licensees by reducing the number of PCS providers with whom they must negotiate, and system-wide relocations will be facilitated."<sup>5</sup>

UTC agrees with PCIA that TIA Bulletin 10-F is the appropriate standard to determine whether PCS-Microwave interference would occur for purposes of determining cost-sharing obligations.<sup>6</sup> Cox Enterprises is inaccurate in stating that Bulletin 10-F is a microwave-to-microwave interference standard and therefore not suitable for assessing PCS-to-microwave interference. TIA Bulletin 10 was specifically revised into Bulletin 10-F to include an industry standard for determining PCS-to-microwave interference. The Commission recognized this point in its Memorandum Opinion and Order (MO&O) in Docket 90-314, and

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<sup>5</sup> PCIA, p. 5.

<sup>6</sup> PCIA, pp. 17-18.

stated that parties may use TIA 10-F to determine interference.<sup>7</sup>

## **II. There Must Not Be A Price Cap On Relocation Expenses**

### **A. Price Caps Would Undermine The Rights Of Incumbents**

A large number of the commenters agree with UTC that the Commission should reject PBMS' proposal to create a price cap on reimbursable relocation expenses.<sup>8</sup> While it is true that the price cap would explicitly apply only to PCS licensees seeking reimbursement from other PCS licensees, it would in effect impose a de facto cap on incumbents' reimbursable relocation expenses. As API notes, a price cap would make initial PCS licensees reluctant to pay more than the cap to relocate a microwave link, since any amount paid above the cap could not be recovered on a pro-rata basis from subsequent PCS licensees.<sup>9</sup>

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<sup>7</sup> MO&O, GEN Docket No. 90-314, 9 FCC Rcd 4957, 5030 (1994).

<sup>8</sup> Association of American Railroads (AAR); API; City of San Diego; Metropolitan Water District (MWD); and Duncan, Weinberg, Miller and Pembroke.

<sup>9</sup> API, p. 6.

Throughout the emerging technology and PCS proceedings the Commission has consistently adhered to the principle that incumbents should not be forced to bear any expenses related to the conversion of these bands to commercial PCS. UTC agrees with AAR that the creation of a price cap would abrogate this fundamental principle by artificially limiting the ability of incumbents to recover all of their relocation costs.<sup>10</sup>

Further illustrating the problems with a price cap is the fact that PCS proponents themselves cannot agree on the proper amount for a price cap -- PBMS proposes a price cap of \$600,000, while PCIA proposes that the price cap be set at \$250,000 (plus an additional \$150,000 if a new tower must be constructed).<sup>11</sup> None of the price cap advocates provide a basis for their proposals. The reality is that relocation expenses are likely to vary widely depending on the type of system, application and geographic location of

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<sup>10</sup> AAR, p. 2.

<sup>11</sup> PCIA, p. 15.

the individual microwave system. As noted by MWD, site acquisition and construction in certain areas of the country, such as protected wilderness areas, can more than double the "standard" cost of microwave construction.<sup>12</sup>

Given the Commission's repeated assurances that incumbents will be made "whole," it would be extremely inequitable to saddle utility ratepayers and other core public safety and public service organizations with the burden of making up the short-fall between actual relocation expenses and an arbitrary price cap.

**B. Sharing Of Relocation Costs**

Based on the comments of BellSouth and other PCS licensees the primary impetus for the creation of a price cap is to ensure that PCS licensees subject to cost sharing are not required to pay for excessive "premiums" that they themselves would not have negotiated with the incumbent

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<sup>12</sup> MWD, p. 5.

microwave licensees. Bellsouth argues that a PCS licensee with no immediate need to relocate a given microwave path should not have to pay any portion of the premium that another licensee unilaterally agreed to pay for accelerated relocation.<sup>13</sup>

Unfortunately, arbitrary price caps do not have any direct correlation to the payment of actual relocation expenses as opposed to "premium" expenses. As discussed above, it is quite likely that in many cases the actual and demonstrable expenses of individual microwave relocations will exceed an established price cap. In such cases, it would be neither fair nor reasonable to expect the initial PCS licensee to bear all of these costs if the relocation will also benefit another PCS licensee. Further, it is likely that there will be significant dispute among PCS licensees regarding the value to subsequent licensees of

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<sup>13</sup> Bellsouth, p. 2.

premiums paid for expedited relocations or other intangibles.<sup>14</sup>

Rather than the imposition of a price cap, UTC recommends that the Commission adopt cost-sharing rules that provide for a sliding scale of negotiable rights that are more closely tied to the underlying rights of the microwave licensee. In addition to the "interference rights" of a relocated microwave licensee, a PCS licensee should also receive the remainder of the microwave licensee's negotiation rights, subject to certain limitations. Specifically, a PCS licensee that relocates a microwave path should receive any remaining portion of the incumbent's voluntary or mandatory negotiation period. The PCS licensee holding the interference rights would have different rights to reimbursement from other PCS licensees

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<sup>14</sup> E.g., a premium might be negotiated in return for a microwave licensee's agreement to waive its right to seek reinstatement in the event the replacement facilities are later discovered not to be "comparable."

during each of these periods:

- Throughout the remainder of the "voluntary" and "mandatory" negotiation periods, the relocating PCS licensee would be entitled to voluntarily negotiate with other PCS licensees over the use of the first licensee's "interference rights." However, to eliminate any anticompetitive refusals to deal, the relocating licensee would be required to waive its interference rights if the second PCS licensee is willing to reimburse the first licensee for its full share of the first licensee's total relocation payments, including any payments made beyond simple replacement costs. The formula proposed by PBMS would be used to calculate the second licensee's share of these payments.
- After the incumbent's "voluntary" and "mandatory" negotiation periods have expired, the PCS licensee holding the "interference rights" to this path could still negotiate in good faith with other PCS licensees concerning those interference rights, but would be compelled to waive those rights if the other licensee is willing to pay its portion of the first PCS licensee's relocation expenses net of any "premiums" or payments beyond the actual costs of relocating the affected microwave path. As above, the formula proposed by PBMS would be used to calculate the second licensee's share of these costs.

This proposal would not result in excessive costs because it incorporates the time depreciation and pro-rata elements of the PBMS proposal. However, rather than using an arbitrary hit-or-miss price cap, it would ensure recovery of all actual relocation expenses. In addition,

UTC's plan more closely resembles the rights that a microwave licensee would have had vis-à-vis a subsequent PCS licensee if it had not been relocated.

### **III. The Commission Should Not Reconsider Other Elements Of The Transition Plan**

Contrary to the requests of some PCS proponents the Commission should not use the PBMS petition as the basis for reconsidering fundamental aspects of the 2 GHz transition plan. The PBMS petition is narrowly directed at resolving the issue of cost-sharing, yet a number of PCS entities are attempting to use it as a platform to resurrect issues regarding microwave relocation that were debated earlier and long resolved.

As AAR notes, the transition plan for the relocation of 2 GHz microwave was painstakingly developed over the course of several years based on extensive input from many parties.<sup>15</sup> Now, however, barely three months into the negotiation process, elements in the PCS community are

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<sup>15</sup> AAR, p. 1.



demanding that the transition plan be substantially revised on the basis of unsubstantiated claims of anticipated abuse on the part of incumbents.

Sprint and Bellsouth both request that the voluntary negotiation period be shortened so that incumbent microwave licensees do not delay the roll-out of PCS.<sup>16</sup> The two year voluntary negotiation period was adopted on the basis of the Commission's belief that "voluntary negotiations will be successful and will result in the least disruptive means for accommodating new emerging technologies in this spectrum."<sup>17</sup> Given the short period of time that has lapsed since the commencement of the voluntary negotiation period for the A and B blocks (less than three months as of this filing) there is simply no basis to suggest that the Commission was wrong in reaching this conclusion.<sup>18</sup>

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<sup>16</sup> Sprint, pp. 4-5; and Bellsouth, pp. 6-7.

<sup>17</sup> Third Report and Order, ET Docket No. 92-9, 8 FCC Rcd 6589, 6594 (1993).

<sup>18</sup> Indeed, UTC is aware of a number of relocation agreements that have already been, or are close to being, successfully concluded.

It must be recognized that in adopting the two-year voluntary time period the FCC explicitly stated that "during this period negotiation over the terms of relocation is encouraged but not mandated (emphasis added)."<sup>19</sup> It strains reason to suggest that parties could abuse a process based on voluntary negotiations.

Similarly, SBMS requests that the Commission narrow the PCS operator's obligation to pay all relocation costs.<sup>20</sup> This should be rejected as a self-serving attempt to whittle away at the established rights of the incumbents. As recently as December of 1994 (in the midst of the A and B auctions) the Commission unequivocally reiterated that

All relocation expenses will be paid entirely by the emerging technology licensee. These expenses will include all engineering, equipment, and site costs and FCC fees, as well as any reasonable additional costs.<sup>21</sup>

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<sup>19</sup> Memorandum Opinion and Order, ET Docket No. 92-9, 9 FCC Rcd 1940, 1944 (1994).

<sup>20</sup> SBMS Supplemental Comments, p. 4.

<sup>21</sup> Second Memorandum Opinion and Order, ET Docket No. 92-9, 9 FCC Rcd 7797, 7798 (1994).

SBMS provides no compelling reason why this policy should now be changed.<sup>22</sup>

It is important to remember that the incumbent microwave licensees are being forced to undertake the operational and administrative burden of relocating their facilities. It is only fair that all of the costs of this relocation be borne by the emerging technology licensees who will cause this disruption, and who will benefit directly from microwave displacement. SBMS itself recognizes this point in a telling statement concerning the relocation of its own 2 GHz microwave facilities from the upper portion of emerging technology "spectrum reserve:"

In the event the Commission does require relocation of microwave licensees, the MSS providers, as the "emerging technology providers" of MSS, must be required to pay all costs associated with the relocation. First, there is no legitimate and equitable reason to require current cellular carriers to incur any costs associated with a forced relocation to provide room for MSS

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<sup>22</sup> The FCC has already specified that it has a number of means to discourage abuse, including requiring payment of less than full relocation costs by emerging technology licensees in specific, egregious cases. Memorandum Opinion and Order, ET Docket No. 92-9, 9 FCC Rcd 1943 (1994).

providers. To require cellular carriers to contribute to payment of such costs would be nothing less than an unjust requirement that cellular carriers subsidize the MSS' entry into the market.<sup>23</sup>

Despite the PCS community's specter of horrors, at this time there is absolutely no compelling justification to revisit the 2 GHz transition rules. Such an undertaking would only serve to delay the roll-out of PCS as the various interests rehash arguments that have already been resolved. The Commission adopted a balanced and equitable transition plan that relies on arms-length negotiations: the FCC should now stand back and let the process work.

#### **IV. Conclusion**

UTC continues to support the creation of a cost-sharing requirement among PCS licensees for the reimbursement of microwave relocation expenses. However, UTC opposes the imposition of a price cap as it would hinder PCS-microwave relocation negotiations and could

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<sup>23</sup> SBMS Reply Comments in ET Docket No. 95-18, p. 4, filed June 21, 1995.

undermine the ability of incumbent microwave licensees to receive full reimbursement compensation for all relocation expenses.

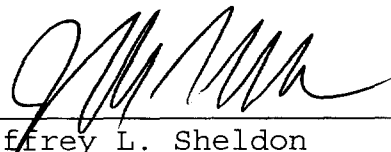
The Commission should resist efforts by some elements in the PCS community to broaden the focus of this proceeding into a wholesale reconsideration of the fundamental principles of the emerging technologies docket. The transition plan is an equitable approach based on arms-length negotiations that balances the interests of all parties. No compelling reason has been put forward that would warrant a change in these rules, which would only serve to delay the development of PCS.

**WHEREFORE, THE PREMISES CONSIDERED,** UTC respectfully requests the Commission to take actions consistent with the views expressed herein.

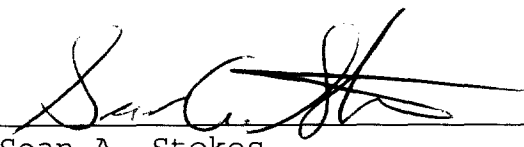
Respectfully submitted,

**UTC**

By:

  
\_\_\_\_\_  
Jeffrey L. Sheldon  
General Counsel

By:

  
\_\_\_\_\_  
Sean A. Stokes  
Senior Staff Attorney

UTC

1140 Connecticut Avenue, N.W.  
Suite 1140  
Washington, D.C. 20036

(202) 872-0030

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